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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,993	06/08/2001	Isabelle Afriat	208593US0	8352

22850 7590 01/20/2004

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
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EXAMINER

WEBMAN, EDWARD J

ART UNIT PAPER NUMBER

1617

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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12/27/03

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/26/03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.  
Of the above, claim(s) 25, 27, 30 is/are withdrawn from consideration.  
☐ Claim(s) \_\_\_\_\_ is/are allowed.  
☒ Claim(s) 1-11, 19-24, 26, 28, 29 is/are rejected.  
☒ Claim(s) 12-18 is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application, PTO-152

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--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 19-24, 26, 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al (6,071,524).

Ribier et al '524 teach a dermatological composition comprising cubic gel particles reading on the claimed cubic gel particles (abstract, column 1 line 66- column 6 line 9). Antioxidants and free radical scavengers are specified (column 6 lines 21-36).

Applicants stipulate pollutants such as ozone, carbon monoxide, nitrogen oxides and sulphur dioxides (page 1 lines 16-18). All of which are oxidizing agents. Additionally, applicants stipulate heavy metals as pollutants, which inhibit cellular defenses against free radicals.

It would have been obvious to use the composition of Ribier et al '524 to protect keratin materials from pollutants in view of the known action of such pollutants as oxidants and inhibitors of cellular defenses against free radicals and the presence of antioxidants and free radical scavengers in the Ribier et al '524 composition to counteract such oxidants and bolster cellular defense against free radicals with exogenous free radical scavengers.

Applicants argue that there is no suggestion of a method of protecting keratin materials from the harmful effects of pollution. However, regrettably, applicants remarks were undoubtedly engendered by a typing error in the rejection undetected by the

examiner which omitted the crucial second sentence in the rejection upon which the reminder of the rejection depended, remedied in the corrected rejection above.

Claims 1-11, 19-24, 26, 28-30 are rejected.

Claims 12-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

Webman/tgd

December 30, 2003

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500